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TRUSTPRICE.COM, and ALAN Z. LIN
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12
13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 MICROSOFT CORPORATION, a
Washington corporation;

16 Plaintiff,

17 v.

18 A&S ELECTRONICS, INC., a
California corporation, d/b/a
TRUSTPRICE.COM; ALAN Z. LIN,
an individual; and JOHN DOES
1-5;

19 Defendants.

Case No. C08 02321 BZ

ANSWER

DEMAND FOR JURY TRIAL

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21
22 Defendants A & S Electronics, Inc., dba TrustPrice.com ("A&S
Electronics"), and Alan Z. Lin hereby answer the complaint of
Microsoft Corporation ("Microsoft") as follows:

23
24 INTRODUCTION

25
26 1. The allegations of this paragraph state legal conclusions

1 as to which no answer is required.

2 2. Defendants admit that Microsoft is a corporation and that
3 it is engaged in the software business. Defendants lack
4 information or belief sufficient to respond to the allegations of
5 this paragraph.

6 3. Admit that A&S Electronics, Inc., dba TrustPrice.com, is
7 a California corporation with its principal place of business in
8 Milpitas, California. Admit that A&S Electronics distributes
9 computer software and components through the web site
10 www.trustprice.com. Deny that Microsoft has suffered damages or
11 other harm as a direct and proximate result of any alleged wrongful
12 conduct by A&S Electronics.

13 4. Admit that Alan Z. Lin resides in Fremont, California,
14 and that he is the registered agent for A & S Electronics. Deny
15 that Lin personally participated in or supervised, directed, or
16 controlled any wrongful conduct. Deny that Lin derived direct
17 financial benefit from or that he may be held personally liable for
18 any alleged wrongful conduct by A&S Electronic. Deny that
19 Microsoft has suffered damages or other harm as a result of any
20 alleged wrongful conduct by Lin.

21 5. Defendants lack information or belief sufficient to admit
22 or deny the allegations of the first sentence of this paragraph.
23 Defendants deny the allegations of the second and third sentences
24 of this paragraph.

25 6. The allegations of this paragraph state legal conclusions
26 as to which no answer is required.

27 7. The allegations of this paragraph state legal conclusions
28 as to which no answer is required.

8. The allegations of this paragraph state legal conclusions as to which no answer is required.

INTRADISTRICT ASSIGNMENT

4 9. The allegations of this paragraph state a legal
5 conclusion to which no response is required.

FACTS COMMON TO ALL CLAIMS

7 10. Admit that Microsoft develops computer software programs.
8 Defendants lack information or belief sufficient to admit or deny
9 the remaining allegations of this paragraph and puts Microsoft to
10 strict proof thereof.

11. Defendants lack information or belief sufficient to admit
or deny the allegations of this paragraph and put Microsoft to
strict proof thereof

14 12. The reference to Microsoft's "partners" is so vague and
15 ambiguous as to preclude a response. In addition, defendants lack
16 information or belief sufficient to admit or deny the allegations
17 of this paragraph and put Microsoft to strict proof thereof.

18 13. Defendants lack information or belief sufficient to admit
19 or deny the allegations of this paragraph and put Microsoft to
20 strict proof thereof.

21 14. Defendants lack information or belief sufficient to admit
22 or deny the allegations of this paragraph and put Microsoft to
23 strict proof thereof. Defendants nevertheless contend and admit
24 that Microsoft attempts to suppress geographic competition beyond
25 the scope of its copyrights and to impose extra-copyright
restrictions on the non-infringing use and enjoyment of its works.

27 15. Defendants lack information or belief sufficient to admit
28 or deny the allegations of this paragraph and put Microsoft to

1 strict proof thereof.

2 16. Admit that Microsoft has developed a software program
3 known as "Microsoft Windows 98." Defendants lack information or
4 belief sufficient to admit or deny the remaining allegations of
5 this paragraph and put Microsoft to strict proof thereof.

6 17. Admit that Microsoft has developed an operating system
7 software known as "Microsoft Windows XP Professional." Defendants
8 lack information or belief sufficient to admit or deny the
9 remaining allegations of this paragraph and put Microsoft to strict
10 proof thereof.

11 18. Admit that Microsoft has developed software known as
12 "Microsoft Office Ultimate 2007." Defendants lack information or
13 belief sufficient to admit or deny the remaining allegations of
14 this paragraph and put Microsoft to strict proof thereof.

DEFENDANTS' UNLAWFUL CONDUCT

16 19. Deny.

17 20. Admit that A&S Electronics advertises and sells software,
18 including Microsoft software, in interstate commerce through the
19 website www.trustprice.com. Deny that this software is
20 "infringing." The remaining allegations of this paragraph are
21 denied.

22 21. Defendants lack information or belief sufficient to admit
23 or deny the allegations of this paragraph and put Microsoft to
24 strict proof thereof.

25|| 22. Admit.

26 23. Defendants lack information or belief sufficient to admit
27 or deny the allegations of the first and second sentences of this
28 paragraph and put Microsoft to strict proof thereof. Defendants

1 deny the allegations of the third sentence of this paragraph.

2 24. Admit that Microsoft sent a letter to A & S. The letter
3 in question, if provided and authenticated, speaks for itself and
4 defendants deny all characterizations of the contents of the letter
5 by Microsoft inconsistent therewith.

6 25. Defendants lack information or belief sufficient to admit
7 or deny the allegations of this paragraph and put Microsoft to
8 strict proof thereof. Defendants deny that they sold infringing
9 software.

10 26. Defendants lack information or belief sufficient to admit
11 or deny the allegations of this paragraph and put Microsoft to
12 strict proof thereof.

13 27. Defendants lack information or belief sufficient to admit
14 or deny the allegations of this paragraph and put Microsoft to
15 strict proof thereof. Defendants deny that they sold infringing
16 software.

17 28. Defendants lack information or belief sufficient to admit
18 or deny the allegations of this paragraph and put Microsoft to
19 strict proof thereof. Defendants deny that they sold infringing
20 software.

21 29. Defendants lack information or belief sufficient to admit
22 or deny the allegations of this paragraph and put Microsoft to
23 strict proof thereof. Defendants deny that they sold infringing
24 software.

25 30. Defendants lack information or belief sufficient to admit
26 or deny the allegations of this paragraph and put Microsoft to
27 strict proof thereof. Defendants deny that they sold infringing
28 software.

1 31. Defendants deny the allegations of this paragraph,
2 including any allegation that Microsoft is entitled to the
3 requested relief. Defendants further state that the third sentence
4 of this paragraph states legal conclusions as to which no response
5 is required.

CLAIM I

(Copyright Infringement, 17 U.S.C. § 501, et seq.)

8 32. Defendants repeat and reallege their responses to
9 paragraphs 1 through 31.

10 33. Defendants lack information or belief sufficient to admit
11 or deny the allegations of this paragraph and put Microsoft to
12 strict proof thereof.

34. Deny.

35. Deny.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

CLAIM II

(Infringing Importation of Copyrighted Works,

17 U.S.C. § 602)

22 40. Defendants repeat and reallege their responses to
23 paragraphs 1 through 39.

24 41. Defendants lack information or belief sufficient to admit
25 or deny the allegations of this paragraph and put Microsoft to
26 strict proof thereof.

42. Deny.

43. Deny.

1 44. Deny.

2 45. Deny.

3 46. Deny.

4 47. Deny.

5 CLAIM III

6 (Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(2))

7 48. Defendants repeat and reallege their responses to
8 paragraphs 1 through 47.

9 49. Deny.

10 50. Deny.

11 51. Deny.

12 52. Deny.

13 53. Deny.

14 AFFIRMATIVE DEFENSES

15 First Affirmative Defense

16 The complaint fails to state a claim for which relief may be
17 granted.

18 Second Affirmative Defense

19 On information and belief, Microsoft is estopped from
20 asserting any claim that the software is counterfeit or otherwise
21 infringing.

22 Third Affirmative Defense

23 Plaintiff's claims are barred by the first sale doctrine.

24 Fourth Affirmative Defense

25 Plaintiff's claims are barred by the defendants' statutory
26 entitlement, under Section 109 of the Copyright Act, to
27 redistribute non-infringing copies of Microsoft's works without the
28 consent of Microsoft.

Fifth Affirmative Defense

Some or all of Microsoft's claims are barred by the doctrine of fair use.

Sixth Affirmative Defense

On information and belief, the defendants' conduct is legally privileged.

Seventh Affirmative Defense

Defendants deny that they have sold infringing copies of software.

Eighth Affirmative Defense

On information and belief, some or all of Microsoft's claims are barred by the doctrine of unclean hands, including Microsoft's effort to bootstrap its limited copyrights into a tool for enforcing price discrimination and the elimination of the very price competition that the first sale doctrine and Section 109 of the Copyright Act encourage.

Ninth Affirmative Defense

On information and belief, some or all of plaintiff's claims are barred by the applicable statute of limitations.

Tenth Affirmative Defense

On information and belief, some or all of plaintiff's claims are barred by the doctrine of laches.

Eleventh Affirmative Defense

Microsoft has failed to take reasonable steps to mitigate its alleged damages.

Twelfth Affirmative Defense

On information and belief, Microsoft has failed to join necessary or indispensable parties.

Thirteenth Affirmative Defense

No privity of contract exists between plaintiff Microsoft and these defendants.

Fourteenth Affirmative Defense

Microsoft's claims are contrary to public policy.

Fifteenth Affirmative Defense

7 Microsoft's claims, in furtherance of its methods of
8 controlling uses of its work beyond the scope of its copyrights,
9 seek to suppress speech that is un-restricted by copyright and is,
10 therefore, fully protected by the First Amendment, thereby placing
11 beyond the aid of a United States court of law Microsoft's efforts
12 to suppress it.

Sixteenth Affirmative Defense

14 Microsoft's method of controlling distribution, as outlined in
15 its claims, reaches beyond the scope of its authority under the
16 Copyright Act, attempts to deny owners of lawfully made copies the
17 rights Congress vested in them and denied to the copyright holder,
18 and attempts to nullify the limitations on copyrights set forth in
19 the Copyright Act, thereby constituting copyright misuse and
20 rendering Microsoft's copyrights unenforceable so long as such
21 misuse continues.

The defendants reserve the right to amend and supplement these affirmative defenses as further proceedings may warrant.

PRAYER FOR RELIEF

27 WHEREFORE, defendants A & S Electronics, Inc., dba
28 TrustPrice.com, and Alan Z. Lin, pray that plaintiff Microsoft

1 Corporation take nothing on its complaint, for an award of costs
2 and attorneys' fees as permitted by law (including under § 505 of
3 the Copyright Act), and for such other relief as may be
4 appropriate.

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7 GORMAN & MILLER, P.C.

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By: /s/
JOHN C. GORMAN
Attorneys for Defendants
A&S Electronics, Inc., dba
Trustprice.com, and Alan Z. Lin

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DEMAND FOR JURY TRIAL

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Pursuant to Fed. R. Civ. P. 38(b), defendants hereby demand
trial by jury.

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GORMAN & MILLER, P.C.

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By: /s/
JOHN C. GORMAN
Attorneys for Defendants
A&S Electronics, Inc., dba
Trustprice.com, and Alan Z. Lin

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